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IN THE

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1951

No.

ROBERT STROUD,

Petitioner,

vs.

E. B. SWOPE, Warden United States Penitentiary, Alcatraz, California,

Respondent.

PETITION FOR WRIT OF CERTIORARI

to the United States Circuit of Appeals

for the Ninth Circuit Court

and

SUPPORTING BRIEF

Submitted by

Robert Stroud, No. 594,
Alcatraz, California,
In Propria Persona.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Jurisdiction

I

This case involved a petition for an injunction filed in the United States Court for the Northern District of California, Southern Division, on March 20, 1950 (R. 48) by an inmate of Alcatraz, against the Warden of that institution in which the inmate attempts to restrain the Warden from interfering with his property rights by unreasonable interference with his correspondence with his business agent, and seeks other redress. (R. 2, 17.)

II

The petition filed in the District Court alleges that the petitioner has been and is being deliberately deprived of his property rights by said Warden acting under color of a statute of the United States (R. 2, 3, 16); That the actions complained of are the result of a conspiracy to deprive petitioner of his property rights without due process of law (R. 2, 3, 14), and that as a part of said conspiracy there has been issued an unconstitutional order by an executive agency of the United States which has served as a pretext for the actions complained of (R. 4, 15).

Under these circumstances the District Court had jurisdiction of the original proceeding pursuant to Sections 43 and 47 of Title 8, U. S. C., and Sections 1343, 1442, 2282, and 2284 of Title 28, U. S. C. (R. 4).

III

Attached to the original petition filed in the District Court was a motion praying for the production of petitioner in Court for the purpose of presenting this action in propria persona which the District Court had jurisdiction to grant pursuant to Section 1651 of Title 28, U. S. C. and this Court's opinion in *Price v. Johnston,* 334 U. S. 226–291 (R. 18).

IV

The United States Court of Appeals for the Ninth Circuit had jurisdiction to review the orders of the District Court (R-48) pursuant to Section 1291 of Title 28, U. S. C.

V

This court has jurisdiction to review the action of the United States Courts of Appeals upon Writ of Certiorari, pursuant to Section 1254 (1) of Title 28, U. S. C.

Statement of Case

I

This case involves a petition for an injunction and other relief brought by an inmate of Alcatraz, against the Warden of that institution (R. 2) and seeks to restrain said Warden from unlawful and unreasonable interference with petitioner's lawful and reasonable correspondence with his business agent, Mr. L. G. Marcus, and other encroachments upon his property rights.

II

The petition alleges that the petitioner has been damaged to the extent of many thousands of dollars (R. 9,

10, 15) by the actions of the respondent and seeks judgment for the amount of his actual and provable damage. (R. 16, 17.)

III

The petitioner alleges that the acts and omissions complained of are the result of a conspiracy against him that has existed in the Federal Bureau of Prisons since October 4, 1931 (R. 15), and that the purposes of said conspiracy are to deliberately so damage him in his property rights that he may never, by any lawful means, whatsoever, obtain funds that might be used to organize a successful campaign for executive clemency (R. 15); and that said conspiracy involved the issuing of an unconstitutional order by an executive agency which since 1931 has operated to effectively deprive the petitioner of his property without due process of law.

NOTE: For details of the events leading up to the formation of the alleged conspiracy see Appendix A. All statements contained therein are provable by official documents or direct testimony.

IV

Attached to the petition are two exhibits, a letter (R. 29-48), to an attorney who double-crossed the petitioner in an attempt to rob him in the interest of another client (Appendix A) and a memorandum (R. 22-29) for petitioner's business agent. The interference with these communications inflicted damages upon the petitioner, the full extent of which was not known to him at the time of drawing his petition, but which actually damaged him to an extent of more than seven thousand dollars. These acts of the respondent are cited as overt acts in the alleged conspiracy (R. 15) and are merely incidental to the funda-

mental issue of the petitioner's complaint, which is the conspiracy to deprive him of his property (R. 15, Appendix A).

V

The present action is the third of several attempts of the petitioner to secure a determination of his rights by the Courts. (Appendix A, B C and D) but in no case has he been successful in obtaining a hearing on the merits of his complaints.

Actions Below

On March 30, 1950 (R. 48), the petitioner filed his petition for an injunction and other relief in the District Court for the Northern District of California; The Case was assigned District Judge Louis R. Goodman, who in one sentence order filed on March 21, 1950, arbitrarily dismissed the action. (R 48.)

This order was duly appealed to the Ninth Circuit Court of Appeals and the petitioner filed a motion in the Court of Appeals for his personal appearance for the purpose of arguing his own case under authority of this Court's opinion in *Price v. Johnston,* 334, U. S. 266.

The motion was denied and Mr. Nathan Cohn, Esq. of San Francisco was appointed by the court to argue the appeal for the petitioner in that court.

The case came on for hearing on March 2, 1951, and was argued by Nathan Cohn for the petitioner and Joseph Karesh, Assistant United States Attorney for the respondent. (R. 57.)

The action of the District Court was affirmed in an opinion filed on March 9, 1951 (R. 58-61), and it is from that opinion that the petitioner seeks certiorari.

QUESTIONS PRESENTED

I

Does a citizen of the United States, even though incarcerated in a penitentiary, retain property rights that his keepers are legally bound to respect?

II

Are his rights to own property protected from official encroachment and conspiracy by sections 43 and 47 of Title 8?

III

If the answers to questions I and II are *Yes,* are the courts of the United States vested with authority to protect the property rights of Federal Prisoners?

IV

Does a single District Judge have authority to dismiss a petition for an injunction seeking to restrain an employee of the United States from enforcing an order of an executive agency of the United States on the grounds that said order is repugnant to the Constitution of the United States?

V

Does an inmate of Alcatraz have a right to prosecute a civil action in *propria persona* in the event of a showing?

One, that he is capable of putting up a sound legal argument;

Two, that the case is of such a nature that it would be impossible for one unfamiliar with the facts intelligently to present it to the court;

Three, that the circumstances of imprisonment are such that it is impossible for the prisoner to give an attorney a complete grasp of the situation complained of, and,
Four, that the prisoner can be produced in court without undue inconvenience or any possibility of escape.

Reasons Why the Opinion of The Circuit Court Should be Reviewed by This Court

I

This Court has never defined the property rights of persons convicted and incarcerated for crimes against the United States, and the opinions of the Circuit Courts are fragmentary and far from conclusive.

II

The Federal Bureau of Prisons has set itself up as the sole arbitor of the rights of inmates of Federal institutions, contrary to the Constitution and Laws of the United States.

III

The opinion of the court below contains the following words:

> "Congress has carefully refrained from imposing upon the court the authority to interfere with matters of prison discipline affecting activities of the character revealed by the record in this case." (R. 61.)

This construction of an Administrative Statute (Act of May 14, 1930, c. 256, 46 Stat. 273, from which are derived sections 4001, 4041, and 4042 of Title 18 U. S. C.), attempts to enlarge the statute in question in a manner

never contemplated by the Congress (Appendix A, para. 17) violative of the Constitution and Laws of the United States, and in direct conflict with the applicable opinions of this Court and the usages and practices of Law.

IV

The above mentioned construction attempts to, and in effect does, confer upon the Federal Bureau of Prisons complete and absolute power over the life and property of every person committed to the custody of the Attorney General. A prisoner may be beaten, hung up by the thumbs, starved to death, or deliberately murdered by other means, all contrary to the Constitution and Laws of the United States, or have his property arbitrarily seized and converted to public use or destroyed without any hope of relief or redress notwithstanding the face that this court has said:

> "An administrative agency may not finally decide the limits of its statutory power. That is a judicial function. *Social Security Board* v. *Hieratko,* 327 U. S. 358, 369."

The same principles applies to administrative officials, *International Ry. Co.* v. *Davidson,* 257 U. S. 506, 514.

> "Otherwise the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer whose action is unauthorized by any law, and is in violation of the rights of the individual." *American School of Magnetic Healing* v. *McAnnulty,* 187 U. S. 94, 110.

NOTE: Lest this court assume that the illustrations cited above are far-fetched and absurd, the petitioner wishes to state that they or their

equivalent are common occurences in Federal Prisons of today and that he has repeatedly witnessed them equivalent with his own eyes and has, on some occasions, corrected them by his own ingenuity. Six times in the last ten years he has suffered serious deficiency illnesses, several of which came close to costing him his life. He has seen a man strapped down for one week, given by force two ounces of paradehyde on one ounce of orange juice three times per day with no other fluid until he was dead. This was for the offense of refusing to submit to an operation that he thought unnecessary and experimental. He has seen a man strapped down and forcibly injected with 37½ grains of sodium amitol at a single dose, 60 grains within a single twenty-four period, half of that amount intravenously and the other half intramuscularly. This when he was suffering from polineuritis and arthritis due to avitimosis for the offenses of asking for medical attention and being personally disliked by a drug-addict stoolpigeon who has since been exposed. He has himself enjoyed the rather unique and interesting experience of being strapped down with his hands at his sides within twenty-four hours of passing the crisis in lobar pneumonia, at a time when he could not possibly get enough air into his lungs in that position to keep him alive, and then after he had become cyanotic had what his would-be murderer htought would be enough pitocarpine to collapse his lungs injected into his arm. This was done because he had received a letter from an assistant United States Attorney saying that he would be called before the next session of the grand jury. He is alive to tell about it only because he is blessed with powerful adrenal glands and was able to out-think his would-be executioner. The details of all these cases are known to James V. Bennett and to the F.B.I., yet the persons directly responsible are still in Government employ.

No! This Court should not delude itself that such things occur only in Russia and Germany. Human nature is the same, everywhere, and the virus of unrestrained autocratic power always produces in the hearts of those who possess it a desire to destroy those who have the courage to challenge its abuses.

The construction of the Statute in question by the Ninth Circuit is in direct conflict with the construction of this same statute by the Sixth Circuit in *Coffin* v. *Reichard,* 143 F. 2d 443, wherein the court said:

> "A prisoner retains all the right of the ordinary citizen excepting those expressly or by necessary implication taken from him by law. While the law takes his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other

prisoners, it does not deny his right to personal security against unlawful invasions.

"Where a man possesses a substantial right, the court will be diligent in finding a way to protect it."

The Fifth Amendment to our Constitution defines the right to *property* in the same clause with *Life* and *Liberty*, as a fundamental right which may not be taken without *due process of law*, and it is axiomatic that *due process of law* comprehends the right to be heard before an impartial court of competent jurisdiction.

VI

This Court has on many occasions defined the rights of State Prisoners and the legal limitations of State Wardens in the lights of the 5th and 14th amendments.

State of Louisiana Ex Rel Francis V. Resweber, 67 S Ct. 374.

Skinner v. *State of Oklahoma*, 62 S Ct. 1110.

Morrison v. *California*, 54 S Ct. 281.

Taylor v. *Georgia*, 62 S Ct. 415.

but it has never defined the rights of Federal prisoners in the light of the Federal Prison Bureau Statute, supra, and this failure has during the last twenty-one years permitted the growth of many serious abuses. (See note under paragraph IV, *supra*, and Appendix A.)

VII

The Court below bases its unusual construction, not upon any Statute of the United States or any opinion of this Court, for indeed there are none that would support

it, but upon the amazing proposition that it would require the correction of existing abuses, the Court said:

> "Aside from the purely legal aspects of this case very practical considerations militate against granting to appellant the relief for which he prays for to do so would open the door to a flood of applications from federal prisoners which would seriously hamper the administration of our prison system." (R. 61.)

PRAYER

Therefore, this court should issue a writ of certiorari and review the whole records and determine the rights of the parties so that prisoners and prison officials as well as the lower courts and the bar in general may have a clear guide to rights of prison inmates and the legal limitations of agents of the Federal Bureau of Prisons, and so doth petitioner forever pray.

Respectfully submitted by

ROBERT STROUD, No. 594,
Alcatraz, California,

In Propria Persona.

In The

Supreme Court of the United States

October Term 1950

No.....

ROBERT STROUD,

Petitioner.

vs.

E. B. SWOPE, Warden, United States Penetentiary, Alcatraz, California,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief in Support of Petition for Writ of Certiorari

SUMMARY OF CASE

This is an injunction proceeding in which the petitioner, an inmate of the United States Penitentiary at Alcatraz, California, attempts to restrain the Warden of that institution from unlawfully interfering with his correspondence for the express and admitted purpose of damaging him in his property rights (R-1-13).

The petition alleges that the actions complained of are the result of a continuing conspiracy that has existed since 1931, and that petitioner has suffered grevious financial loss as a result of said conspiracy, the purpose of which is and has been to so damage him in his property right as to make it impossible for him ever to obtain funds which might be used to carry on a campaign for his release.

Attached to the petition and made a part thereof by reference is a memo that the petitioner sought to have delivered to his business agent, and which shows plainly the type of matters which the Warden has unlawfully attempted to prevent by interfering with his correspondence.

The advantageous sale of a copyright on a book, *Stroud's Digest On the Disease of Birds* of which the petitioner is the author and was at the time of the filing of his petition, the copyright owner.

The selling of a story of the petitioner's life, written from documents and records not within the custody or jurisdiction of said Warden;

The prevention of a friend and wellwisher from deeding to the petitioner a piece of real property of considerable value;

The frustration of lawful plans for affecting petitioner's release by executive clemency (Exhibit B, R 22-29).

The petition alleges that the petitioner has a substantial property right in each of the matters mentioned, and that the pretext upon which the Warden has refused to permit the correspondence in question is an unconstitutional order of the Federal Bureau of Prisons, first promulgated upon October 4, 1931, which is set out in full in revised

for in the opinion of the Court below (Note (1) R. 60) and that said order is unconstitutional because it is not and never was intended to be applied equally to all inmates (R.15) because it is a usurpation of power never granted or intended to be granted by the Congress and because it seeks to vest in the Federal Bureau of Prisons with absolute and arbitrary power over the property of all persons convicted of crimes against the United States (R.16).

Attached to the petition filed in the District Court is a motion for the personal appearance of the petitioner for the purposes of prosecuting the action in propria persona (R.18-21) which sets out reasons why the motion should be granted.

ARGUMENT

The Petition respectfully submits:

I

THAT AS A CITIZEN OF THE UNITED STATES EVEN THOUGH INCARCERATED IN A PENITENTIARY RETAINS PROPERTY RIGHTS THAT HIS KEEPERS ARE LEGALLY BOUND TO RESPECT.

The Fifth Amendment to our Constitution provides that:

> "No person shall be—deprived of life, liberty, or property without due process of law."

Section 41 of the Title 8, U.S.C. provides that:

> "All persons within the jurisdiction of the United States shall have—equal benefit of all laws and proceedings for the security of persons and property . . . "

Section 42 of the Title 8 provides that:

> "All citizens of the United States shall have the same right—to inherit, purchase, lease, hold and convey real and personal property."

Section 43 of Title 8 provides that:

> "Every person who, under the color of any statute—subjects any citizen of the United States—to deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

The disabilities of convicts depend on statutory provisions.

(18 C.J.S. 105; *Byers* v. *Banks,* 139 Pac. 948; *Haynes* v. *Paterson,* 125 Va. 730, 102 S.E. 471, 6 A.L.R. 1456)

There is no Federal statute affecting civil or property rights of convicts.

(*Presburg* v. *Hull,* 34 Mo. 29)

The prisoner retains all the rights of the ordinary citizen excepting those expressly taken from him by law or necessary implication.

Coffin v. *Reichard,* 143 F (2) 443

In the court below the respondent relied upon *Kelly* v. *Dowd,* 140 F 2d 81 (C.C.A. 7th, 1944).

This is a case brought in the Federal District Court by a State prisoner. The opinion hinges on the fact that the prisoner had not exhausted his remedies in the State Courts. The Court said:

" . . . whether a State Warden . . . has adopted regulations or performed acts which result in unreasonable discrimination against an inmate or takes from him the right not to be subjected to indignities or deprives him of what prisoners are permitted to enjoy under the statutes, are questions peculiarly fit to be determined in the first instance by the Courts of the State."

But if State Courts have the power to control the wrongful acts of State Wardens, it is obvious that Federal Courts have the same power over federal Wardens.

Dissenting opinion of William Denman in *Sanders* v. *Johnston* 159 F (2d) 74

The respondent also relies upon *Platek* v. *Aderhold* (C. C.A. 5) 73 F (2d) 173, 175.

In this case the Court said:

"The equitable remedy of injunction is not available touching good time, for equity does not meddle with matters of criminal law unless property rights are to be protected."

II

That his right to own property is protected from official encroachment and conspiracy by sections 43 and 47 of Title 8, and that the function of court is the safeguarding the property rights of all citizens from official encroachment.

As a matter of common sense, the possession of a right presupposes the power to protect it, and civilization exists only where the courts have been established as a substitute for trial by battleaxe. In the primitive society the indi-

vidual possesses no right that he is not willing to fight for and able to defend. Of course, that is true, in a large sense in all societies, but the degree of civilization can always be measured by extent to which the rights of individuals are protected by the Courts.

The Constitution, by Andrews

It is elementary that the power of judicial review of the acts of either the legislative or executive branches of the government exists. Such power has not been seriously questioned since the celebrated case of *Marbury* v. *Madison* 1 Cranch 137 (1803)

The exercise of the discretion of prison officials who are subordinate officers and the Executive Branch of the Government, is no exception to the rule. The Courts have interfered to prevent the use of cruel and inhuman punishment in violation of the United States Constitution.

In re Birdsong, 39 F. 599 (1899)

In that case the Court held that a prison keeper, for the purpose of keeping custody of prisoners committed by a United States Court, is an *officer* of *such court.*

In *Kelly* v. *Dowd,* supra, it is held that State Courts of necessity have the power to control the wrongful acts of State Wardens.

This Court has held that an administrative agency may not finally decide the limits of its statutory power. That is a judicial function.

Social Security Board v. *Hierotke,* 327 U.S. 358, 369 (1946)

Fleming v. *Moberly Milk Products Co.* 160 F (2d) 259, 265, (App. D.C. 1947) Pet. Writ. Cert. dismissed on motion of counsel for petitioner, 331 U.S. 786.

The petition is applicable to administrative officers.
Cf. *International Ry. Co.* v. *Davidson,* 257 U.S. 506, 514, (1921)

"Otherwise, the individual is left to the absolutely uncontrolled and arbitrary actions of a public and administrative officer whose action is unauthorized by any law, and is in violation of the rights of the individual".
American School of Magnetic Healing v. *McAnnulty* 187 U.S. 94, 110 (1902)
Fleming v. *Moberly Milk Products Co.,* Supra

It is the undoubted rule that discretion of an administrative functionary may never be arbitrarily exercised and when it is, the manner of its exercise may be judicially reviewed.

Bradley v. *Richmond,* 227 U.S. 477, 483 (1912)
Marshal v. *Bowles,* 58 F Supp 463 (N.D.Cal. 1944)
Acret v. *Harwood,* 41 F Supp 492 (S.D. Cal 1941)
Hine v. Welch, 23 F (2d) 259

In view of these principles, it is apparent that the court below wrongfully held that the respondent herein possessed an absolute right to carry out the duties imposed upon him by statute in such an arbitrary and uncontrolled manner as to effectively deprive the petitioner of his property, or in any manner he sees fit.

This court in the case of *St Joseph Stock Yard Co.* v. U. S. 298 U.S. 38-52 (1935), has said:

"Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority."

Certainly, the silence of Congress in its enactment of the applicable law (Title 18 U.S.C. 4042) as to judicial review of the Warden's administrative acts is not necessarily to be construed as a denial of the power of Federal Courts to grant relief in the exercise of the general jurisdiction which the Congress has conferred upon them.

Estep v. *U.S.* 327 U.S. 144 (1946)

The petitioner has charged that the Warden in the instant case has acted in such a manner as to deliberately and intentionally injure him in his property, has deliberately caused him to suffer heavy financial loss, and that such action is the result of a conspiracy entered into for that specific purpose.

He has not asked the court below to interfere in any manner with the discipline of the institution to which he is lawfully confined but he has challenged the authority of said Warden to constitutionally stretch his disciplinary power to cover matters concerning the handling of petitioner's property beyond the prison walls. As such, the action is properly brought and the court below is mistaken in the view that Congress did or could have intended it otherwise.

See *Philadelphia Co.* v. *Stimson,* 223, U.S. 605, 620 (1911)

The petitioner is seeking by this action a judicial review of the respondents conduct in the light of the complete history of his relationship with the Federal Bureau of Prisons as outlined in Appendix A. He seeks a review of a question of law, to wit: Whether a prisoner in a United States Penitentiary is entitled, as a matter of right under the Constitution of the United States, to exercise control

of his lawfully acquired property, so long as that property, is used in any lawful manner. It has never been doubted that questions of law form the appropriate subject matter for judicial determination.

See *Federal Radio Comm.* v. *Nelson Bros. Co.* 289, U.S. 266 (1932)

The petitioner, in the hope of forestalling threatened injury from the continuation of the respondent's illegal conduct, has instituted these proceedings to enjoin respondent from further unreasonable interference with matters that are entirely outside of his sphere of administrative authority. By no stretch of the imagination can the deeding of real property beyond the walls of the prison be considered a matter of prison discipline, nor can the copyright in a book of which the petitioner is the owner or any property value which may accrue to him and become attached to his name as a result of service to his fellowmen beyond the walls be considered matters within the scope of the Warden's disciplinary discretion, and the jurisdiction of federal courts to issue injunctions to protect property rights or other rights safeguarded by the constitution cannot be disputed.

Bell v. *Hood,* 327 U.S. 678 (1945)
Philadelphia Co. v. *Stimson,* 223 U.S. 605 (1911)
Hays v. *Seattle,* 251 U.S. 233 (1919)
Pennoyer v. *McConnaughy,* 140 U.S. 1 (1890)
City Ry Co. v. *Citizens R.R. Co.* 166 U.S. 557 (1896)
City of Mitchell v. *Dakota Telephone Co.* 246 U.S. 396, 407 (1917)

In case of a threatened injury by the action of an officer of the United States which is beyond the statutory limits of said officer's authority, such officer cannot claim immunity from injunction process.

Philadelphia Co. v. *Stimson* 223 U.S. 605, 620 (1911)

The principle has frequently been applied with respect to State Officers seeking to enforce unconstitutional enactments.

Osborn v. *Bank of United States* 9 Wheat, 838, 843, 868 (U.S. 1824)

And it is equally applicable to an executive officer of the United States acting in excess of his authority.

Philadelphia Co. v. *Stimson,* supra
Nobel v. *Union River Logging R.R. Co.* 147 U.S. 165, 171, 172 (1892)
American School of Magnetic Healing v. *McAnnulty,* supra

On the other hand the court below bases its opinion in part on *Price* v. *Johnston,* 334 U.S. 266, cited by the petitioner for other reasons and points out at page 285 that

> " . . . lawful incarcerations bring about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system."

Which is obviously true. You do not permit a man in prison to purchase dynamite or hacksaws. The Warden is charged with the duty of retaining custody and enforcing good order, and within those limits his power is, or should be, in the absence of a clear showing of abuse of discretion, absolute, but even that does not mean that he can disregard the clear provisions of the constitution and law.

Kelly v. *Dowd,* 140 F (2) 81 (CCA 7th, 1944)

And furnishes no legal justification for the invasion of the right of the individual prison inmate which does not

come within the limits of retaining custody or enforcing good order.

It should be noted that in *Price* v. *Johnston,* supra, this court recognized the justice of Price's contentions and granted him the relief prayed for on every point raised in his petition.

In this connection the opinion of the court below (R.60) cites

DeCloux v. *Johnston,* 70 F Supp 718
Sanders v. *Johnston,* 159 F (2) 74
Numer v. *Miller,* 165 F (2) 936
Sanders v. *Swope,* 176 F (2) 311
Snow v. *Roche,* 143 F (2) 718
Shepard v. *Hunter,* 163 F (2) 872

Yet, in not one of these cases does the record support the inferences drawn from them by the government, and written into the opinion of the Court below in this case.

DeCloux v. *Johnston* 70 F Supp. 718 was dismissed on technical grounds that did not go to the merits of the contentions made. It was not appealed because DeCloux was given what he really wanted by the prison officials.

Sanders v. *Johnston,* 159 F (2) 74. The Opinion in this case was a complete evasion of the contentions of both sides and affirmed the action of the District Court on the grounds of insufficiency of the pleading. On the question of the Court's power to review the actions of the Warden, it said:

> "We need not enquire what if any authority the courts have in the premises. The complaint was properly dismissed for failure to state facts sufficient to entitle appellant to relief."

Judge William Denman in a vigourous dissent said:

> "The reductio ad absurdum of the Warden's contention is that a prisoner may be hung up by the thumbs for a week for an infraction of prison discipline and yet the courts could not enjoin such cruel and unusual punishment forbidden by the Eighth Amendment. This although 8 US CA 43, provides for a civil action in equity for deprivation of constitutional rights. In this appeal we have the question of the deprivation without due process of the Fifth Amendment of appellant's property right in his litigation in which he is refused communication with his attorney".

Judge Denman dissenting *Sanders* v. *Johnston,* supra *Numer* v. *Miller,* 165 F (2) 986. This case was instigated by the petitioner herein. It involved a suit for an injunction to restrain E. J. Miller from arbitrarily denying Numer educational advantages allowed to other inmates, but the real purpose of the suit was to expose an attempt to deliberately murder twenty-five inmates ** of Alcatraz during the Mutiny there on May 2, 1946. It was reasoned by petitioner that the District Court of the Northern District of California, which would not grant a hearing on a question of life and death, might grant a hearing on some phoney- baloney issue like an English lesson that did not amount to anything anyway. And that is exactly how it worked out.

**NOTE: It was planned to murder the twenty-five men in D-Block on the pretext that the prison authorities thought the rifle was in there, while they actually knew better. The petitioner, by challenging this point and putting his own life on the line was able to defeat the murder plot and bring all the men through alive, although more than 30,000 shots and two hundred anti-tank grenades were fired at them. This attempted murder was at the direct order of James V. Bennett, but was not whole-heartedly approved by some of the men sent to carry out the execution."

At the hearing, Numer handed to Judge Michael J. Roche a document entitled Ex Parte Richard A. Numer and Robert Stroud, which contained the inside, eye-witness story of the attempted murder, including a verbatum report of many official conversations not couched in polite language, written by this petitioner. The document was hand printed and ran to twenty-eight thousand words. It was altogether too hot to file or to release to the public, but it was so convincing that Judge Roche kept it in his possession for one month and it set in motion the train of events which led to E. J. Miller and James A. Johnston being removed from Alcatraz as Associate Warden and Warden for 3040 days good time which they had taken from Numer being eventually restored in its entirety.

Sanders v. *Swope,* 176 F (2) 311. In this case the appeal was dismissed for the reason that appellant had used improper language in his brief in which he referred to the F. B. I. as the *American Gestapo.*

Snow v. *Roche,* 143 F (2) 311. Cecil Snow was an illiterate Okie. He had developed gum abcesses as a result of malnutrition and was suffering from the obvious symptoms of scurvy. The dentist talked him into having all of his teeth removed, and during this period the boy lost more than forty pounds. His body became covered with sores. His pleas for a diet that would sustain him during the ordeal of having his teeth removed were ignored. He reasoned that Judge Roche, who had presided at his trial a short time before on a charge of murder of which he had been acquitted, would, if he saw him, be convinced of the justice of his complaint from the change in his appearance. He wrote the petition himself, and it was so

bad it would have been funny if it had not been so pathetic. He entitled his petition *habeas corpus;* he addressed it to Judge Roche; he prayed for his release on the grounds that he was being subjected to cruel and unusual punishment and being deprived of his life without due process of law; but he added that he would gladly settle for two little eggs and a half of bowl of milk.

He sent first draft of his opus to the writer to have it corrected.

The writer unscrambled Cecil's unique language just sufficiently to make his meaning clear without spoiling his individual style.

The petition was assigned to Judge Louis E. Goodman and summarily dismissed.

The petitioner herein had the idea that the case provided a rare opportunity to test the validity of Rule No. 1 of the District Court for the Northern District of California under which ninety percent of the petitions filed from Alcatraz are assigned to Judge Goodman and summarily dismissed, it is firmly believed here, without reading more than the heading. He drew the petition for Mandamus and had it filed in the Ninth Circuit Court.

The Court issued an order to show cause.

The Warden filed a voluminous return; and the court held that since the facts alleged in the petition did not go to the validity of Snow's judgment, they were without power to issue the writ prayed for.

Judge William Denman who sat on this case later said:

"We did not say that Snow had no remedy, for assuredly he had. We merely said that habeas corpus was not the

proper remedy for one attempting to litigate the propriety of his treatment by prison authorities."
Price v. *Johnston* 159 F (2) 234

From Dissent by Judge William Denman See *Price* v. *Johnston* 334 U.S. 266 wherein this court reversed the majority opinion of the Circuit Court and sustained the conclusions drawn in Judge Denman's dissent.

Not one case cited in the opinion of the Circuit Court (R58,61) supports the conclusions drawn by that Court.

It is submitted, therefore, that the courts do have power to review the unlawful invasion of property rights by minions of the Federal Bureau of Prisons and that such rights are protected by the Fifth Amendment and Sections 43 and 47 of Title 8, U.S.C.

III

THAT THE NINTH CIRCUIT COURT WAS MISTAKEN IN ITS PRESUMPTION THAT CONGRESS EXPRESSED AN INTENTION TO DEPRIVE THE COURTS OF POWER TO REVIEW ADMINISTRATIVE ACTS OF MINIONS OF THE FEDERAL BUREAU OF PRISONS BY MERE SILENCE UPON THE QUESTION OF REVIEW IN THE CREATIVE STATUTE AND RESTRICT THE COURTS TO FUNCTION OF DELIVERING FROM CONFINEMENT THOSE WRONGFULLY HELD.

The Court below said (R 60):

"We think that it is well settled that it is not the function of the Courts to superintend the treatment and discipline of prisoners in penetentiaries, but only to deliver from imprisonment those who are illegally confined."

In support of this view the opinion cites:
Sarshik v. *Sanford,* 142 F (2) 676

Platek v. *Aderhold,* 73 F (2) 173
Kelly v. *Dowd,* 140 F (2) 81, 83
Snow v. *Roche,* 143 F (2) 718
Shepard v. *Hunter,* 163 F (2) 872
Taylor v. *United States,* 179 F (2) 640

Most of these cases have been analyzed ante and it is sufficient to point out here that not one of them clearly supports the conclusion drawn by the lower court, and most of them contain expressions that are clearly to the contrary.

On the other hand, this court has supported the contrary rule in every case where a similar question has been presented.

Poindexter v. *Greenhow,* 114 U.S. 270, 282, 288, 290 330.
In Re Ayers 123 U.S. 443, 500
Cunningham v. *Macon & Brunswick, R. R. Co.* 100 U.S. 446, 452
United States v. *Lee,* U.S. 196, 220
Exparte Young, 209 U.S. 123
Hopkins v. *Clemson Agricultural College* 221 U.S. 636, 643
Philadelphia Co. v. *Stimson,* 223 U.S. 605, 619, 620
Exparte LaPrads, 259 U.S. 444, 445

The correct rule has undoubtedly been stated in *United States* v. *Ring Construction Co.,* 96 F. Supp 762, by Nordbye, Chief Judge, for this District of Minnesota, Feb. 23, 1951 wherein Judge Nordbye said:

"Briefly construed, section 403 (8) (1) forbids review by this court of any questions of the tax court. But Congress cannot delegate to an administrative agency the

power to venture beyond the limits set by the Constitution."

Crowell v. *Benson,* 285 U.S. 22

Switchmen's Union of North America v. *National Mediation Board* 320 U. S. 297

This rule applies whether the Administrative ruling involved will apply to a corporation or to an individual.

Estep v. *United States,* 327 U. S. 114

A statute governing the final reviewability of an administrative determination must like any other statute be interpreted so as to be constitutional if possible.

See Estep v. *United States,* supra.

In re Goldman v. *American Dealers Service.*

135 F (2) 398, On page 400, Judge Frank, with the concurrance of Judge August N. Hand, speaking for the court said:

> " . . .For the purpose of construing the statute, we are required to assume that appellants, government officials, without a shadow of lawful authority, have seized a citizen's property. Officials when they thus behave, are stripped of their official characters; what they do is the mere wrong and trespass of those individual persons who falsley speak and act, in the name of the government; an official who has acted in that manner, ceases to an officer of the law, and becomes a private wrong doer; though professing to act as officers."
>
> *Poindexter* v. *Greenhow* 114 U. S. 270, 282, 288, 290, 330."

Judge Learned Hand who dissented for other reasons, said:

> "It is true that a delay of six months may be unnecessary - - in this case it seems to have been used to force the plaintiff to an 'administrative proceeding' for which I can find as little warrant in law as my brothers."

But there is no practical difference between seizing a person's property and cutting the string by which he keeps control of his property and manages it in the manner most advantageous to his interests. In both cases, the loss suffered by the victim of such official usurpation of power is the same. No moral or practical line can be drawn between the man who goes out as an individual and seizes the property of others at the point of a gun and the man who uses his official position to destroy the property of someone subject to his control at the instigation of a superior who hates and desires to injure that party. One hopes to gain material wealth directly; the other hopes to gain personal advantage through the good graces of the superior, but both are injuring others for personal gain.

It is impossible for any statute to escape the fixed rules of construction as to constitutionality, and the Act creating the Federal Bureau of Prisons cannot logically be made an exception.

Estep v. *United States,* Supra

So even had the statute contained a clause specifically exempting the acts of prison authorities from judicial review, the minute those acts came in to conflict with provisions of the Constitution or with other statutes of the United States, it would become the duty of the Courts to construe the statute in such a manner as to save the constitutional safeguards essential to our form of government, and if that were impossible, to declare it unconstitutional.

Therefore, it is submitted, that the Ninth Circuit Court was mistaken in imputing to Congress an intention that Congress could not have entertained without coming into conflict with the constitution, and, since the members of

Congress, no less than the courts, is charged with the duty of upholding the Constitution, it cannot be assumed that it intends to act unconstitutionally.

IV

THAT A SINGLE DISTRICT JUDGE DOES NOT HAVE AUTHORITY TO DISMISS A CIVIL ACTION CHALLENGING THE CONSTITUTIONALITY OF ANY ORDER OF AN EXECUTIVE AGENCY OF THE UNITED STATES.

The applicable statute is section 2282 of Title 28 USC, which reads:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for regugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

Section 2284 reads in its pertenent parts:

> "The district judge to whom the application is presented. . . shall immediately notify the Chief Judge of the circuit, who shall designate two judges. . . " Subsection (1).
>
> "If the action involves . . . an order of any department or agency of the United States . . ." Subsection (2), paragraph 2.
>
> ". . . A single Judge shall not . . . dismiss the action." Subsection (5) paragraph 1.

While section 2282 does not specifically mention orders of executive agencies, the words *operation* and *execution*

comprehends the orders of agencies created under acts of Congress, since the powers of such agencies created flow directly from the creative statutes and are limited by the authority therein granted. This construction is obvious from the reading of sections 2282 and 2284 together.

The case law on this point is not available to the petitioner at the moment, but it is undoubtedly well known to the members of this court, and the statute appears to be clear and unambigious.

The obligation to act within the framework of our Constitution bears just as heavily upon the Executive branch of the Government as it does upon the Legislative or the Judicial branches.

Estep v. *United States* 327 U. S. 114
Poindexter v. *Greenhow* 114 U. S. 270,282,288
International RY Co. v. *Davidson* 257 U. S. 506,514, (1921)

The order complained of has been set out in the opinion of the court below (R60, note (1) and in its pertinent parts reads as follows:

> "Correspondence with business associates, of course, must be limited to social matters. *An inmate cannot be permitted to direct his business, no matter how legitimate it may be, while he is in prison.* But this does not go to the point of prohibiting correspondence necessary to enable the inmate to protect and husband the property and funds that were legitmately his at the time he entered the institution. Thus a prisoner could correspond about refinancing a mortgage on his home or sign insurance papers, but he could not operate a mortgage or insurance business while in the institution." F. B. P.

Manual Bulletin 9X096. Feb. 23, 1944.
Paragraph 2, Section 6.

Note the underscored sentences. This sentence is the rule, and all other parts of the paragraph are addenda, as originally promulgated on October 4, 1931, it read:

> "An inmate may not be permitted to transact business by correspondence, no matter how legitamate it may be, correspondence with business associates must be limited to social matters only."

This is the rule that prompted Representative McSwain to inform Sanford Bates that he was acting like the G. P. U. and had better pay more attention to the Constitution of the United States and less to the doctrines of Karl Marx. (Appendix A. Paragraph 19).

This rule is unconstitutional because it is incapable of being impartially and uniformly inforced, and attempts to place matters outside of the statutory jurisdiction of prison officials within their control, through their control of the inmates correspondence. To illustrate:

A man whose wealth consisted of real estate or mortgages might be able to husband it under this rule, but what of the man whose wealth consisted of copyrights on literary works when someone had taken advantage of his imprisonment to infringe on his copyright for personal profit.

This court has repeatedly held that a copyright is property which may be protected by proceeding in equity or suits at law filed in the District Courts of the United States,

> Title 17, U. S. C. A. SEE annotations following sections 1, 34, and 41.

or by criminal actions in the district courts of the United States in cases of wilful infringement.

> Title 17, U. S. C. A. Section 28, SEE annotations following section.

Yet, it has been held by the Federal Bureau of Prisons that this rule has forbidden an inmate to protect a copyright for the reason that such an action might cause publicity adverse to the Bureau.

Note: In 1933 E. J. Powell of Kansas City published, *Diseases of Canaries* by Robert Stroud, under an agreement to pay one dollar to the author or his agent for every copy sold; to print in the front of the book an introduction containing a plea for the author's release from prison, and to print in the back of the book certain advertising material beneficial to the author.

The work was published in April, 1933, but all material beneficial to the author was omitted, not one cent of royalty was ever paid.

This work was copyrighted in the name of the author in compliance with the provisions of sections 9 to 18 of Title 17 U. S. C. A. Later in the year the author served a written demand for his royalties upon the publisher of the work in compliance with Title 17, U. S. C. A. section 1, and when his royalties were not paid, and when he had been prevented by the prison authorities from writing to any attorney concerning his claim, petitioner contrived to have served on the publisher notice of infringement which warned said publisher that he was forbidden to reproduce the work in whole or in part, and that any violation of said prohibition would be prosecuted under section 25 of Title 17, U. S. C. A.

Thereafter, in November 1938, and January and February, 1939, E. J. Powell the publisher reproduced for profit more than five thousand copies of certain parts of the petitioner's work in direct violation of the notice of infringement served upon him in October, 1933.

The petitioner was refused permission to write to the publisher and make claim upon him for damages; he was refused permission to write to an attorney; he was refused permission to complain to the United States Attorney. When he complained to James V. Bennett he was advised to forget his claim. When he continued to protest, Mr. Bennett promised to investigate the matter. One year later, Mr. Bennett stated that he had been too busy to look into it, when the petitioner demanded:

"What are you waiting for, the Statute of Limitation to expire or for me to die?"Mr. Bennett replied: "You know, that is an idea."

Mr. Isiac Sway, Senior Warden's Assistant at Leavenworth said: "We admit that legally you have a valid claim ,but you are a convict and Mr. Powell is a respectable citizen. We cannot permit you to proceed against him for that would cause adverse publicity."

The petitioner submits that any regulation which permits prison authorities to so ruthlessly brush aside the property rights of prison inmates is repugnant to the due process clause of the Fifth Amendment.

It was in the hope of driving a wedge in the door that would permit himself and other prison inmates to seek the protection of the courts in such cases that this action was brought. That is the flood of litigation that the United States Court of Appeals for the Ninth Circuit is so anxious to prevent when it says:

". . . practical considerations militate against granting the appellant the relief for which he prays for to do so would open the door to a flood of applications from other prisoners which would seriously hamper the administration of our prison system."

And the petitioner might add, by exposing its abuses of power and causing adverse publicity.

The petitioner respectfully submits that it might be in the public interest for this court to define the property rights of Federal Prisoners, since it has never done so. Such definition might possibly remove much of the cause for the flood of litigation the court below seems to fear.

V

THAT EVEN AN INMATE OF ALCATRAZ HAS A RIGHT TO PROSECUTE A CIVIL ACTION IN PROPRIA PERSONA IN EVENT OF A SHOWING, THAT:

The inmate is capable of presenting his case in a proper manner;

That he can be produced in court without undue inconvenience or danger of escape;

That he has no attorney or is incapable or obtaining the services of one in whom he has confidence; and that the case involves a fundamental right.

This court has laid down the above conditions as criteria for determining whether or not an inmate of Alcatraz should be allowed to argue his case in propria persona before the circuit court of appeals.

Price v. *Johnston,* 334 U.S. 266

The right to property is a fundamental right as has been previously shown (Argument I), and it is obviously much more important to the litigant to have his case properly and satisfactorily presented to the district court in the first instance than it is to have it properly argued upon appeal, for if the case is bungled in the district court, even though he has a just cause, the best argument in the world cannot correct that bungling in a court of review.

On the other hand the motion filed in the district court (R. 20) pointed out that the petitioner has had rather unfortunate results with his attorneys. On several occasions he has consulted attorneys of San Franchisco and had them tell him that he had a good case but that they did not care to handle it for fear of offending government officials. One attorney said:

"I have to live with these people and provide for my family. I know that you have had a raw deal and I would like to help you, but I cannot afford to take your case."

The motion filed in the district court referred to some of the petitioner's experience with attorney Jacques Leslie. In this respect, petitioner refers the court to paragraphs 47 to 59, Appndix A and Appendix D, which consists of true copies of two letters received from Mr. Leslie. It will be noted that even though Judge Lemmon dismissed the action in case No. 28295-H, on December 7, 1948 (Appendix C) Mr. Leslie's first letter is dated February 25 1949, and that his second letter is dated July 5, 1949. The copy of the new petition was no better drawn than the petitions filed by the petitioner in that case. It failed to correct the jurisdictional statement to conform with the

requirements of the 1948 edition of Title 28, U. S. C. and it might have been drawn by any amateur law clerk from the origin paper within one hour. Not one statute or authority had been consulted. The next word the petitioner had from Attorney Leslie was in January, 1951. Exhibit A. (R. 29-48) was written in response to that letter, sent to petitioner's agent in an attempt to induce said agent to renew a contract with Mr. Leslie's client, Richard Palimar. Maybe if Judge Pope, who in his concurring opinion (R 61), designates this letter defamatory, scurrilous and abusive, could be in possession of all the facts or could have the pleasure of enjoying such an experience himself, he might feel that letter is very mild.

Be that as it may, if he had enjoyed the experience of seeing others profit to the tune of hundreds of thousands of dollars as a result of his labors while he languished in a solitary cell and had his tongue swell up and burst and his kidneys stop functioning from pellagra because the food served to him was insufficient to sustain health and unfit for a hog to eat, he might not think that any effort that he might make to improve his lot was *nonsense* (R. 61).

It is just possible that if Judge Pope were willing to spend a little time purging his profession of men like Mr. Leslie who are willing to use their professional skill to victimize a helpless man in prison, such letters would not be necessary.

In the present case the petitioner was represented in the circuit court by Nathan Cohn of San Francisco, who was appointed by Chief Judge William Denman to argue the case for the petitioner, (R. 56), after that court had denied the petitioner's motion for his personal appearance (R. 55)

At the time of the appointment, petitioner had already mailed his handwritten brief to the clerk and informed the clerk that he would arrange for paying the bill for printing by the regular court printer under the clerk's supervision as soon as he received an estimate of the cost.

Said brief was turned over to Attorney Nathan Cohn, and Mr. Cohn attempted to visit the petitioner, but at that time petitioners tongue had burst from pallagra, his kidney had stopped functioning and he was bed-ridden and unable to speak, so Mr. Cohn was not permitted to see him.

Two weeks later, while petitioner was still very ill, Attorney Cohn called at Alcatraz, spent more than one hour in discussion with P. J. Madigan, Associate Warden, then told the petitioner in his first breath that he wanted to withdraw the suit and make a settlement with the respondent.

Mr. Cohn had had petitioner's brief typed, but said that he wanted to change it and add a few more cases before sending it to the printer. For more than one month nothing was done and Mr. Cohn had failed to seek an enlargment of the time. On September 28, 1950, the clerk of the circuit court notified petitioner that he was in default on serving and filing his brief.

Thereupon, petitioner notified Paul P. O'Brien, Clerk of the Ninth Circuit Court of his illness and of the fact that his brief and the money to pay for the printing and serving had been in his hands since August 16, 1950, and disclaimed responsibility for the failure of an attorney, appointed without a request from him, to obey the rules. Mr. O'Brien arranged for the continuance and the brief was printed with change by Attorney Cohn.

A letter from Mr. Cohn is set out in Appendix E. It should be noted in the fourth to last paragraph Mr. Cohn states that he is not interested in cases which might cause embarrassment to the Warden. (Appendix E)

It is not intended to cast any reflection upon Mr. Cohn as an attorney, but only to show this court that the public has been so propagandized concerning the inmates of this place that it is impossible for such an inmate to obtain faithful legal service, no matter how just his cause.

NOTE: In regard to the use of objectionable language in prisoner's correspondence, the rules of Alcatraz provides that objectionable passages shall be marked and that the letter shall be returned to the writer so that he may reword such passages. The petitioner's communications were held up because of the business matters mentioned, not because of objectionable language, it will be noted (R. 9, Paragraphs X and XI) that the petitioner's letter, objectionable language and all, was mailed to the faithless attorney he was discharging, but not to his business agent, which caused petitioner and his business agent a heavy financial loss.

CONCLUSION

The writ of Certiorari should be granted, and this court should determine the rights of the parties. It should also define the rights and limitations of Federal prisoners with respect to property in general, so that the lower courts, prison officials and the prison inmates themselves may have a sound idea of just what these rights are.

Respectfully submitted by

ROBERT STROUD No. 594,
Alcatraz, California,
In propria persona.

A

History Behind Litigation

IN THE SOUTHERN DIVISION OF THE UNITED STATES

1) The petitioner is serving a life sentence in the United States Penitentiary at Alcatraz, California. He has been in prison for forty-two years, and for the last thirty-five years he has been continuously kept in solitary confinement.

2) The sentence he is now serving is the result of the commutation by President Wilson of a death sentence imposed upon him in July, 1918, by the United States District Court for the District of Kansas upon a conviction of murder resulting from the killing of a guard in the prison dining room at Leavenworth on Sunday, March 26, 1916.

3) At the time of this homocide, the petitioner was serving a twelve year sentence imposed upon him in Alaska for the crime of manslaughter committed in Juneau, Alaska, on January 18, 1909.

4) The sentence of death was imposed by District Judge Robert E. Lewis, of Denver, Colorado, and following the form prescribed by the statutes of that state (See In re Medley, 134 U. S. 160) contained a clause which reads:

> "——that you be held in solitary confinement until the 8th day of November next——"

5) President Wilson, on the 16th day of April, 1920, modified the sentence of death by scrawling on the face of the clemency papers:

> "Commuted to Life—W. W.

6) The petitioner, who entered prison as a nineteen year old boy without formal education, has since his first

day in prison, spent all of his spare time in self-improvement studies, and had, during the seven years preceding the killing at Leavenworth, given himself the foundation of a sound scientific education.

7) Following the commutation of his sentence of death, the question of how his life sentence was to be served became an issue.

8) The prison authorities were anxious to continue to hold the Petitioner in solitary confinement in the Isolation Building, but under the law as it then existed, they were required to treat him exactly the same as any other newly admitted inmate (See Revised Statutes, with annotations following sections R. S. 5537 to 5547) and petitioner's mother and his attorney's insisted that he be treated the same as any other prisoner or that he be transferred to some other institution pursuant to R. S. section 5546, and threatened to take the matter to court.

9) The Department of Justice, realizing that the law was clear and that its position could not be maintained in court was anxious to compromise; and the petitioner, being of a studious turn of mind, could see advantages to be gained by coming to an understanding with the prison authorities.

10) He agreed not to contest the question of his confinement in isolation and to cause no trouble for the prison authorities, providing he was given all the privileges of other first grade prisoners and in addition such special privileges as would permit him to keep his mind occupied.

11) This understanding was approved by A. Mitchell Palmer, then Attorney General, and pursuant to same petitioner, devoted himself to breeding canaries and a scientific study of the diseases of pet birds. He established a profit-business in birds; gave himself a sound education in the biological sciences essential to the study of diseases; established a laboratory at his own expense; and became a writer on the subjects of avian biology, pathology, and therapeutics, upon which he carried out extensive researches, the results of which he published in various trade and scientific journals.

12) As a result of his researches, the petitioner made important scientific discoveries and became known throughout the world as the foremost authority on the diseases of pet birds, and his work was recognized and encouraged by the various prison administrators and the Attorney General, over a period of eleven years, as a valuable public service.

13) During this period, 1920-1931, the petitioner established a profitable business beyond the prison walls for the exploitation of certain of his scientific discoveries, and this was done with the approval of the prison authorities and the Attorney General.

14) It was a part of the understanding under which the necessary privileges were granted that the petitioner would never at any time capitalize upon his criminal record or the fact that he was a convict in a solitary cell, nor at any time do anything inimical to or apt to bring criticism upon the prison authorities, and during this eleven year period, both the petitioner and the prison authorities

lived up to their respective parts of this understanding religiously.

15) With the coming into power of the Federal Bureau of Prisons and the establishment of their policies in 1931, orders were issued which made it impossible for the petitioner to continue by restrict his purchase of food and supplies for his birds. This was done by Sanford Bates over the protest of J. B. White, Warden at Leavenworth.

16) The petitioner, who at that time knew absolutely nothing about legal procedure, was refused permission to consult an attorney, and being in solitary confinement, was unable to seek the advice of legally experienced fellow inmates, and so, he was effectively deprived of access to the courts.

17) During the above mentioned period, the petitioner had made thousands of loyal friends who had no idea that he was in prison. When these friends learned of the petitioner's plight, they set in motion a wave of nationwide publicity critical of the arbitrary and unfair conduct of the Federal Bureau of Prisons of such intensity that 431 members of the congress, the same men who had enacted the prison bureau laws, made forceful representations to Sanford Bates, who was then Director of the Federal Bureau of Prisons, in petitioner's behalf, thirty-four of these gentlemen recommended that petitioner be given a pardon in recognition of his accomplishments. The vast majority recommended that petitioner be paroled at the earliest possible date. Every one of these men took the views that the application of the provisions of the prison bureau laws to the injury of the petitioner would be an ex post

fact punishment of added severity and therefore, illegal. One of the more than 100,000 persons who signed petitions for the petitioner's release at that time was Harry S. Truman, Kansas City, Mo., President of the United States. Herbert Hoover, then president, said that he thought the petitioner deserved a break and that he would like to give him a pardon but felt constrained to follow the recommendations of Mr. Bates, who believed that petitioner should be paroled as soon as he became eligible. The reaction of Congress was apitomized by Representative McSwain of South Carolina, then ranking Democratic member of the subcommittee on appropriations for the Department of Jusitce, who, in a letter to Sanford Bates, wrote:

> "We did not give you the broad powers you enjoy with the intention that they should be employed to destroy the fruits of any man's good conduct and honest industry (Quotation from memory).

18) This public reaction and the attitude of the President and Congress forced upon Mr. Bates the realization that he had gone too far. In his efforts to save *face* he came up with a rule not previously promulgated to the effect that inmates were not permitted to employ their correspondence for the transaction of business (R. 60). The first notice Warden White had of this rule was reference to it in the Kansas City Star on October 4, 1931. (See Brief, Argument IV, P. 30.) But Mr. Bates had noted that petitioner took great pride in the fact that his work was of public service, and he had a grand idea. He would socialize petitioner's business under the Federal Prison Industries, Incorporated. The Government would go into

partnership with petitioner. They would have an invoice taken of petitioner's stock and equipment, the Government would match petitioner's investment, dollar for dollar; the petitioner would be permitted to raise the birds and the Federal Prison Industries would sell them and transact all business; the profit would be split 50-50; and the Government's share would be turned over to the prisoners' amusement fund, so that the petitioner could feel that he was being of service to his fellow inmates.

19) A formal contract between the Federal Prison Industries, Incorporated, and the petitioner was drawn up by Mr. — Shelton, Superintendent of Industries at Leavenworth, and signed by Mr. Shelton for the Government corporation and by the petitioner, and put into operation but when the contract and the rule under which it was drawn (R. 60, Note (1), came to the attention of Representative McSwain, he wrote a vigorous protest to Mr. Sanford Bates which he concluded with these words:

> "I would suggest that you pay more attention to the Constitution of the United States and less to the doctrines of Karl Marx."

20) Whereupon, Mr. Bates ordered James V. Bennett, then Assistant Director of the Bureau of Prisons, to come to Leavenworth and induce the petitioner to submit a counter proposal, which the petitioner refused to do. Petitioner insisted that the Bureau either live up to the terms of the original contract or that they turn him out, free.

21) The discussion continued from 7 P. M. on December 2, 1931, to 3 A. M., December 3, 1931. During the

course of this discussion Mr. Bennett repeatedly warned the petitioner in words and substance as follows:

> "You had better cooperate with us. You have the public behind you now, but the public soon forgets. We will not forget."

To which the writer replied:

> "You are using the wrong word, Mr. Bennett. *Co-operation* means *to act with*. It connotes mutual assistance for mutual benefit. I have not seen any indications of that on your part. For almost two years, you, Bates and McCormick (Austin H. McCormick, Ass't. Director of the Federal Bureau of Prisons) have been coming around here patting me on the back and telling me that I was doing fine. Then, at the first opportunity, you try to cut my throat and destroy everything I have created. When the heat comes on, you put out a lot of propaganda trying to show that I am insane. If you want cooperation, I would suggest that you practice a little of it."
>
> "I'll admit that we made a mistake, but now we want to help you."
>
> "O. K. Turn me out then! President Hoover has told certain persons that he believes that I have earned a break, that he would like to pardon me, but that he does not feel that he can disregard the recommendations of Mr. Bates."
>
> "You know that!"
>
> "I always know what pertains to me. I also know what was in McSwain's letters, for I composed it myself."

22) Mr. Bennett was forced to return to Washington and admit failure. Thereupon Mr. Austin H. McCormick

was dispatched to Leavenworth with orders to attempt to negotiate a settlement of the dispute. And an agreement was arrived at, which was finally written into an order of the date of January 1, 1932, which provided that the writer was to be exempt from all special regulations issued under the Prison Bureau Laws on the grounds that those laws were *ex post facto* as to him. He was placed under the direct jurisdiction of the Director of the Federal Bureau of Prisons, the Warden and the day guard in the isolation. It further provided that the petitioner should have new quarters, a special room for his birds and an outside window; that he should have improved laboratory facilities; permission to purchase all supplies essential to carrying on his researches, his studies, and the care of his birds, including any special scientific literature published in the English language. It provided that all business correspondence pertaining to his researches or the sale of his birds was to be privileged, that he was to enjoy all of the privileges of any other first grade prisoner, including permission to attend all entertainment and shows and to two hours per day for recreation and exercise in the fresh air. It was also promised in writing that petitioner would be paroled on February 27, 1937 (Kansas City Star, January, between 5th and 10th, 1931).

24) These concessions, granted as they were, under public and congressional pressure, were not entered into by the Federal Bureau of Prisons in good faith. From the very beginning up until the present time there has existed in the Federal Bureau of Prisons a conspiracy to accomplish by encroachment and methods of indirection what they had not been able to do by direct assault,

25) First, the petitioner's advertising and writing for the trade and scientific journels was stopped; then a plot was entered into to break up the petitioner's bird business by quietly shipping him to Alcatraz at the time that institution was taken over by the Federal Prison Bureau.

26) The petitioner learned of the plot and found methods of bringing it to public attention. And again his friends rallied to his support, and the order stopping that move was issued by Louis McHenry Howe, Private Secretary to President Roosevelt.

27) At that time, Homer S. Cummings, then Attorney General, angered by the adverse publicity which resulted from the exposure of this plot, issued an order in which he construed the petitioner's judgment as being a sentence to life imprisonment in solitary confinement and ordered that petitioner be held in solitary confinement for the rest of his life.

28) Throughout this period, from January 1, 1932, to December 16, 1942, the writer was consistently and repeatedly refused access to the courts or permission to consult an attorney, and during one period of more than two years was refused the right to write to a United States Attorney concerning a criminal violation of the copyright law. (Brief, P. 30.)

29) In 1933 the petitioner wrote a book: Diseases of Canaries ,by Robert Stroud, published by E. J. Powell, Kansas City, 1933. The publisher took advantage of the fact that the petitioner was a convict in the bad graces of the Prison Bureau, and beat the petitioner out of this royalty on the book.

30) The petitioner's business agent, at that time, Mrs. Della Mae Jone of Kansas City, had taken the precaution to protect petitioner's ownership of the copyright of this book, but Sanford Bates ordered the warden at Leavenworth not to permit petitioner to write any letters concerning his claim against the dishonest publisher. When the petitioner complained to Austin H. McCormick, he said:

> "After all the trouble you caused us before, you cannot expect us to even permit you to get your hands on enough money to put on another such campaign."

31) In 1939, the petitioner completed another and more comprehensive work on bird diseases, which, after four years effort, involving considerable protesting to the Bureau, by scientists and aviaullurists from all over the world, the writer was finally permitted to publish under the title, *Stroud's Digest On The Diseases Of The Bird,* Minneapolis, 1943, which has been highly praised as the most outstanding work of its kind by scientists and bird breeders in twenty-six countries.

32) Even though this work was published with the permission of the Federal Bureau of Prisons, that agency went to extreme lengths to discredit the petitioner and prevent the work from being a financial success.

33) These efforts included the transfer of the petitioner to Alcatraz upon trumped up charges upon which he was never tried before any disciplinary board or officer or of the nature of which he was never informed; yet, concerning which much false propaganda was put out to the public. Also many letters filed with completely

false charges and statements were mailed to the petitioner's friends in an attempt to discredit him and his work, and to scientists, asking them not to write favorable reviews of the book.

34) Since his arrival at Alcatraz, where from the first time he came in contact with men who knew a little concerning legal procedure and where for the first time he was able to secure some silght access to legal literature, the petitioner has made three attempts to carry the questions of these continuous assaults upon his property rights to the courts, but in no case has he been able to secure a hearing upon the merits of his contentions.

35) The first attempt was the filing of a petition for writ of habeas corpus on April 21, 1943, No. 23817, on the docket of the United States District Court for the Northern District of California, Southern Division.

36) The petition catalogued many encroachments upon the property and legal rights of the petitioner, and attempted to allege these infringements of the rights of the petitioner in proper form, but it was the petitioner's first attempt to write any legal document, and was probably very poorly drawn. The petition was filed in forma pauperis, and the petitioner prayed that an attorney be appointed to assist him in the prosecuting of the action.

37) The case was assigned to District Judge Louis E. Goodman.

Foot note to follow paragraph 33, Appendix.

Note: Among the lies put out by James V. Bennett in his attempt to libel and discredit the petitioner were the following which were given nationwide publicity.

One: *That Petitioner had sold J. Edgar Hoover a painted sparrow for $10.*

The truth is that in July, 1937, J. Edgar Hoover visited the petitioner's cell at Leavenworth and there saw a large cage containing twenty some snow white canaries—all young birds, not yet in song. Mr. Hoover wanted one of these birds, and he was told that it was the writer's opinion that they were all males, but since they were not yet in full song, there was the possibility of a mistake, but that any birds sold from that cage that did not prove to be a singer by October 1st would be replaced without charge. The price was $10.00.

There was another bird cage full of white birds in the room. These birds were all over one year old, they were proven and selected singers of the finest quality and were all of the Yorkshrie type. These birds were priced at $25.00 each.

Mr. Hoover decided that he wanted one of the cheaper birds, and was told that if the bird did not sing by October 1st it would be replaced at the petitioner's expense. The bird was selected by Mr. Hoover, placed in a shipping box in his presence, and the shipping labels consigning the bird to Mr. Hoover's mother, were made out and placed on the box by the petitioner and the bird was turned over to one of the agents present in the party with instructions to take it directly to the Express Office.

In October, petitioner heard that Mr. Hoover was displeased with the bird. He wrote to Mr. Hoover and told him that if he was displeased to write him at once, and he would replace the bird. Petitioner continued to hear stories of Mr. Hoover's displeasure, and wrote to him three times between October 1st and January 1st, 1938, urging him to inform the petitioner of his displeasure. Mr. Hoover did not reply to any of these letters.

In April, 1938, long after all of the cheaper birds had been sold Mr. Hoover sent agent Farland of Kansas City to Leavenworth to get a replacement for the bird. As the only white birds petitioner then had were the $25.00 birds, he was forced to send one of these to Mr. Hoover.

Agent Farland, not much impressed with the fairness of his superior's conduct, later purchased several of the higher priced birds himself as gifts for his friends.

Two: *Mr. Bennett displayed a dagger and gave out the story that petitioner had made that dagger to kill him with. The dagger had a wooden handle and was of beveled edge construction.*

Two versions of this story were widely published at Mr. Bennett's instigation.

Foot note continued.

a. *That the dagger had been found in petitioner's cell at Leavenworth and was the reason for his transfer to Alcatraz.*
6. *That petitioner had actually attempted to kill Mr. Bennett of Alcatraz, but that Mr. Bennett had been too smart for him and had snatched the knife away from him.*

The truth is that during one period in his life between 1915 and 1920, the petitioner made many daggers, but they were all of distinctive design and workmanship. They all had straight, parallel edges like a Roman Sword and short leather handles, with a leather thong to slip over the little finger, so that they could not be knocked from the hand.

The dagger in question was brought to the petitioner's cell at Leavenworth on the evening of December 15, 1942, by Mike Dodson, a negro orderly working in the Isolation, who was a stoolpigeon for Warden Hunter. Petitioner did not want to take the dagger, but Dodson begged him to keep it overnight. As Petitioner was dependent upon the orderly for many services, he could not very well refuse.

At five o'clock the next morning, the petitioner was seized in his sleep, in the best Nazi manner, chained hand and foot and transferred to Alcatraz. It is the petitioner's firm belief that the conduct of orderly Dodson was instigated by Warden Hunter at the suggestion of James V. Bennett. In any case, Petitioner was deliberately framed.

Had Petitioner wanted to harm Mr. Bennett, or any one else, he needed no dagger for the purpose, since he was allowed to have all kinds of tools, including wood chisels, an ice pick, several long screw drivers, a claw hammer, various knives, and a whole set of dissecting instruments, any one of which could have easily been used as a lethal weapon.

Who dismissed the action in a Memorandum Opinion filed on May 7, 1943, which is set out in full in Appendix B. On page 3, Page 54 herein the Judge wrote:

> "—Habeaus Corpus— (may not be used) to secure judicial determination of a question, which, even if determined in favor of petitioner, would not result in his release."

38) Thus indicating that the petitioner had raised questions, no matter how improperly they were raised, to which he had a right to a judicial determination.

39) The memorandum also states that the petitioner is treated no differently from other inmates of Alcatraz, which, of course, has never been true. The petitioner has been held in solitary confinement in Alcatraz for eight and one half years, the only difference being that Alcatraz is more poorly equipped for complete Isolation than Leavenworth, and at least ten per cent of the population is kept in the Isolation.

40) During his eight and one half years in Alcatraz the petitioner has never been permitted to enjoy any of the recreations allowed other inmates or to engage in any of the activities permitted other inmates. For the last three years he has been confined to a single room in the prison hospital and has not been allowed out of it excepting to bathe, go to the toilet, and for infrequent visits with his brother or an attorney.

41) Prior to the beginning of the administration of Warden E. B. Swope, the present Warden of Alcatraz, in 1948, the petitioner was allowed to carry on business correspondence through his present agent, L. G. Marcus, with bird breeders, friends, and scientists. He was also permitted to keep himself abreast of scientific literature and had in his possession approximately four hundred dollars worth of books purchased with the approval of the former Warden, James A. Johnston.

42) The original agreement with the Bureau under which the petitioner was allowed to publish his book, *Stroud's Digest On The Diseases Of Birds,* provided for such correspondence and provided for bringing out revised editions of the work from time to time.

43) On August, 1948, E. B. Swope cut off the correspondence with third persons through petitioners agent, interfered with business letters to said agent advising him of the wishes of the petitioner concerning the handling of his property, seized the petitioner's books, and blocked the petitioner's work on the revision of his book, for which preparations had already been made and in preparation for which the petitioner had devoted five years to literary research.

44) Said conduct of E. B. Swope, cost the petitioner a heavy financial loss.

45) On September 9, 1948, petitioner made his second attempt to bring the above mentioned matters before a court. He filed in the District Court for the Northern District of California a petition for an injunction, *Stroud* v. *Swope,* No. 28295, in which he alleged unlawful invasion of his property rights in violation of section 41 and 43 of Title 8, U. S. C.

46) This case was assigned to District Judge George B. Harris, who issued an order to show cause and set a date for a hearing.

47) The petition in this case was drawn at a time when the petitioner was very ill and was under heavy mental and physical strain, so it probably was not very nicely drawn, but following the filing of the petition, two attorneys appeared for the petitioner: Mr. William Fallon, Esq., Sutter Street, San Francisco, California, who donated his services and was appointed by the court without consulting the petitioner; and Mr. Jacques Leslie, Esq., 275 South Beverly Drive, Beverly Hills, California, who was

also attorney for Richard Palimar, of Palimar Productions, an independent producer of Motion Pictures who was interested in acquiring the motion picture and Television rights to the story of the petitioner's life.

48) The petitioner accepted the services of these attorneys very much against his better judgment, since he feared that the one had been inspired to enter the case at the instigation of the prison officials, a fear that was probably without foundation, and that the other was more interested in assisting Palimar to probably rob him than in his welfare, a fear that proved to be fully founded.

49) The Warden filed a motion to dismiss on the grounds that the petition did not state a cause for action upon which relief could be granted, and this matter was argued by Jacques Leslie for the petitioner and Joseph Karesh, Assistant United States Attorney, for the respondent, before U. S. District Judge Dal M. Lemmon, sitting for Judge Harris, who was otherwise engaged, on December 6, 1948, and the petitioner later learned that Mr. Leslie's argument had not been addressed to the issues before the Court, but had been designed to and did hoodwink petitioner's agent, who was present.

50) Judge Lemmon dismissed the action without prejudice on the grounds that since petitioner who had drawn his papers without assistance of counsel, was represented by attorneys at the hearing, the pleadings should be properly drawn, as to an alleged invasion of property right and to show the court's jurisdiction to grant the relief prayed for (Appendix C). He allowed ten days for filing an amended petition.

51) The memorandum was filed on December 7, 1948, but the clerk of the court failed to notify petitioner's attorneys of the filing of the memorandum within the time limit set by Judge Lemmon.

52) As soon as William Fallon heard of the filing of the memorandum, he appeared before Judge Harris and asked for an enlargement of the time. Judge Harris informed Mr. Fallon that the amended pleadings could be filed at the convenience of attorneys.

53) William Fallon informed petitioner that he had no facilities for the preparation of papers, but that they would be prepared by Mr. Leslie, (See letter from William Fallon, Appendix D. The word *Attorney* used in the last two paragraphs refers to Mr. Leslie. The typewriter referred to is one owned by petitioner which he offered to give to Mr. Fallon).

54) Mr. Leslie promised repeatedly through Mr. Fallon through Mr. Marcus, and by letter to petitioner (See two letters, Appendix D) to prepare the papers at once, but he procrastinated for more than a year, and never did prepare them.

54a) During that year the petitioner learned that Mr. Leslie through false promises of what he was doing for petitioner had induced petitioner's agent to sell to Mr. Palimar the motion-picture and television right to the story of the petitioner's life for the paltry sum of ten thousand dollars to be paid to petitioner within one year if the picture was not in production, or at the start of production; that Richard Palimar was insolvent and had hoped to use the petitioner to recoup his finances; that

the scheme to do this had been hatched by Mr. Leslie, to whom Mr. Palimar was deeply in debt, and that Mr. Leslie had entered petitioner's litigation for the express purpose of seeing that the suit was killed.

55) At the end of the one year period, when petitioner's agent demanded that the ten thousand dollars be paid or that the material and documents supplied to Mr. Palimar be returned, Mr. Leslie wrote a letter to petitioner's agent demanding that the contract be renewed on the strength of this devotion to petitioner's legal interest. Petitioner's reply to that letter is set out in the record (R. 29-48).

56) This in turn involved petitioner's agent in a law suit in the courts of California which cost petitioner and his agent more than three thousand dollars against the story in question.

57) All of the above mentioned losses were the result of the respondents interference with petitioner's correspondents, which prevented complete understanding between petitioner and his agent, and deprived petitioner's agent of petitioner's advice.

58) These serious financial losses forced the petitioner to sell the rights to his book, *Stroud's Digest On The Diseases Of Birds,* at a sacrifice price and for much less than could have been obtained had petitioner had the advantage of his advice and instruction which was withheld from him by the respondent (R. 22-23), in order to pay his pressing debts.

59) Thereupon, petitioner filed the present suit in the District Court.

60) The petitioner is a man of more than average creative ability. Throughout the years since the setting up of the Federal Bureau of Prisons, and within the duration of and as a direct result of the conspiracy alleged in the District Court (R. 3, 5, 6, 7, 15), the petitioner has been repeatedly robbed of the fruits of his creative activity, and has been forced to see others profit from his labor to the tune of hundreds of thousands of dollars while he is forced to bring this petition on borrowed funds because the actions of the respondent and the other conspirators named in the record (R., 5); yet in no case has he been able to obtain a hearing upon the merits of his complaint.

61) So, petitioner is impelled to ask if this is a fair sample of the much vaunted American Justice of which we so loudly boast; if it is the kind of public conduct which has the approval of this court of last resort.

ROBERT STROUD, No. 594,

Alcatraz, California.

STATE OF CALIFORNIA,
COUNTY OF SAN FRANCISCO. } ss.

Comes now Robert Stroud who says that he is the author of the above sketch of the history and circumstances behind this litigation; that all statements made therein are true, are well known to the Federal Bureau of Prisons and to the respondent, and that most of them can be proven by official documents.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

Subscribed and sworn to before me this 19th day of July, 1951.

NOVA F. STUCKER,
Acting Associate Warden, United States Penitentiary, Alcatraz, California.

Records at U. S. Penitentiary, Alcatraz, California, indicate that Robert Stroud is a citizen of the United States.

In the Southern Division of the United States District Court for the Northern District of California

ROBERT STROUD, *Petitioner.*	No. 23817
vs.	
JAMES A. JOHNSTON, U. S. P., Alcatraz, California, *Respondent.*	

On Petition for Writ of Habeas Corpus

Memorandum Opinion

Petitioner, in addition to his petition for writ of habeas corpus, has filed a motion for subpoena duces tecum and a motion for writ of habeas corpus ad testificandum. It appears from the 29 page petition for the issuance of the writ, that Stroud was, on a conviction of murder in the first degree in the District Court of the United States for the District of Kansas sentenced to death and the judgment was affirmed by the Supreme Court. (*Stroud* v. *U.S.*, 251 U. S. 15.) On April 16, 1920, President Woodrow Wilson commuted the sentence to life. The sentence provided that petitioner should be held in solitary confinement until the death penalty was exacted. Upon commutation by the President, the Attorney General ruled that the life sentence should be served in solitary confinement in an isolation building of the United States Penitentiary at Leavenworth, Kansas.

Petitioner alleges that he was held in solitary confinement at Leavenworth prison from June 28, 1918, to December 16, 1942 (petition for writ, page 10). However in the verified motion for subpoena duces tecum petitioner alleges that he was held in "limited solitary confinement" during the period stated and that he enjoyed most of the privileges of the other prison inmates. It is alleged that on August 1 1942, a new prison warden, one Walter A. Hunter, was appointed and that Hunter embarked upon a course of persecution of petitioner, and, finally, with the connivance of the Attorney General and the Director of the Bureau of Prisons, caused the transfer of petitioner on December 16, 1942, to the United States Penitentiary at Alcatraz, California, within the jurisdiction of this Court.

Petitioner first complains that he was unlawfully imprisoned because of the vagueness and ambiguity of the sentence, and that his constitutional privileges (Constitution; Amendment V) were violated by the order of solitary confinement.

However, it appears on the face of the petition, that petitioner is not in solitary confinement at the Alcatraz Prison and is there receiving no different treatment than that accorded to other prisoners there confined. We are concerned here only with the legality of petitioner's restraint at the time of filing his petition.

Dunlap v. *Swope* (9 Cir.), 103 Fed. (2d) 19.

Petitioner's so-called "limited solitary confinement" in the Leavenworth prison is not a ground for relief. The function of the writ of habeas corpus is to determine

whether the detained person is entitled to immediate release and not to secure a judicial determination of a question, which, even if determined in favor of petitioner, would not result in his release.

McNealy v. *Johnston* (9 Cir.), 100 Fed. (2d) 280.

Petitioner's second contention is that his confinement at Alcatraz Prison subjects him to cruel and inhuman punishment within the meaning of the Eighth Amendment to the Constitution. It appears in the petition that he was not and is not imprisoned in solitary confinement at Alcatraz prison. His claim that his detention is in violation of the Eighth Amendment of the Constitution, on the face of the petition, is without merit.

Petitioner's third point, which he stresses at great length, is that his confinement at Alcatraz penitentiary is in violation of Article I, Section 9, Clause 3 of the Constitution. (Petitioner apparently means Article I, Sec. 16 of the Constitution.) In this behalf he alleged that the Statute (18 U. S. C. A. 753F) which empowers the Attorney General to transfer Federal prisoners from one Federal Penitentiary to another was adopted subsequent to the sentence imposed upon him and is therefore ex post facto. This contention is without merit.

In re: *Berman* (7 Cir) 80 Fed. (2d) 361

Petitioner alleges, as part of his third point, that the Attorney General acted arbitrarily in causing him to be removed to Alcatraz prison for the reason that it was not for his well being or to relieve overcrowded unhealthful conditions at Fort Leavenworth. However, it is well settled that the matter of the transfer of prisoners from one peniten-

tiary to another is within the discretion of the Attorney General.

In re: *Berman,* supra

The Court is not required to either award a writ or to issue an order to respondent to show cause, where, from the face of the petition, no issue of fact is presented.

28 U. S. C. A. 455.

Erickson v. *Hodges* (7 Cir.) 179 Fed. 177.

Accordingly, the motion for subpoena duces tecum is denied; the motion for writ of habeas corpus ad testificanficandum is denied and the petition for writ of habeas corpus is denied and the petition is dismissed.

Dated: May 6, 1943.

The Court is not required to either award a writ or to issue an order to respondent to show cause, where, from the face of the petition, no issue of fact is presented.

28 U. S. C. A. 455.

Erickson v. *Hodges* (7 Cir.) 179 Fed. 17.

Accordingly, the motion for subpoena duces tecum is denied; the motion for writ of habeas corpus ad testificandum is denied and the petition for writ of habeas corpus is denied and the petition is dismissed.

Dated: May 6, 1943.

LOUIS E. GOODMAN,
United States District Judge.

NOTE: This case was appealed to the 9th Circuit Court of Appeals and this court denied certiorari in the October Term of 1943, but the petitioner does not have the reference numbers, but the complete record is in the files of this court for that term.

In the Southern Division of the United States District Court for the Northern District of California

ROBERT STROUD, *Petitioner.*	No. 23817
vs.	
JAMES A. JOHNSTON, U. S. P., Alcatraz, California, *Respondent.*	

MODIFICATION OF MEMORANDUM OPINION

The memorandum opinion filed herein on May 6, 1943, is hereby modified and amended as follows:

The sentence reading "Petitioner apparently means Article I, Section 16 of the Constitution" (line 20 and 21, page 3 of the memorandum opinion) is hereby stricken therefrom.

Dated: May 26, 1943.

LOUIS E. GOODMAN,
United States District Judge.

In the United States District Court for the Northern District of California, Southern Division

ROBERT STROUD, *Petitioner.* vs. E. B. SWOPE, Warden, United States Penitentiary, Alcatraz, California, *Respondent.*	No. 28295 H ORDER

Petitioner, an inmate of the United States penitentiary at Alcatraz, California, brought this action for injunctive relief. Respondent moves to dismiss.

He has published a book known as "Stroud's Digest of the Diseases of Birds" with the official permission of James V. Bennett, Director of the Federal Bureau of Prisons at the time permission was given, and, as alleged, it was specifically specified in the permission granted:

> One, that L. G. Marcus should be designated by the Bureau of Prisons as official business agent for Robert Stroud;
>
> Two, that all business correspondence between petitioner and his business agent pertaining to publication, distribution, revising and advertising of said book should be privileged;
>
> Three, that the Bureau or its agents would be at no time interfere with the conduct of this business.

This permission appears to have been given when petitioner was confined in the Leavenworth Prison. Later the place of confinement was changed to Alcatraz. His complaints are directed against the present warden of that institution and the associate warden acting under an existing directive which refuses permission to inmates to carry on business while confined. It appears from his petition that letters from Marcus to petitioner have been returned to the sender and that a letter from petitioner to Marcus has been returned to petitioner. These letters relate to pending negotiations to produce a motion picture depicting petitioner's life and activities. It is also alleged that the petitioner wrote a letter to the United States Attorney which the warden refused to transmit. That letter complains of the interception of his correspondence and conditions at the prison. He prays for an order for an injunction restraining the respondent warden and his representative from "interfering in any way whatsoever with any lawful rights and privileges accruing to him under the terms of the above mentioned contract or with his correspondence with the Courts or the United States Attorney".

At the oral argument petitioner's counsel put forward the contention that the acts complained of constituted cruel and inhuman punishment in violation of the Eighth Amendment. The interference with civil rights, if such rights the petitioner has in connection with matters alleged in his petition, do not amount to cruel and inhuman punishment in violation of the constitutional guarantee. The petition is devoid of any necessary allegations from the proof of which a claim of such treatment

can be inferred. The principal argument of petitioner appears to be upon the contention that the permission granted by Bennett and later by James A. Johnston, former warden at Alcatraz, upon the faith of which petitioner published and marketed the book which he had written ripened into a contract which neither Bennett nor his successors may abrogate in the manner, as he contends, it has been abrogated and breached by the curtailment of the privilege of sending and receiving correspondence to and from the business agent and others. It would be stretching the facts beyond any warrant to hold that the petitioner has rights under a contract either express or implied in law. The most that can be said of the writing given by Bennett, assuming that the same was in writing, is that it was a permission granted to the convict. It needs no authority for the holding that such a permission was revocable in the discretion of the warden and his successor.

That the petitioner has property rights in the book is unquestioned. Yet, if the interference with his correspondence is unreasonable and is unjustifiable as a prison regulation and injures his property right such right may be and should be protected by the equitable remedy of an injunction, having in mind at all times that the equity powers of this court do not permit interference with matters of criminal law. *Platek* v. *Aderhold,* 73 F. 2d 173. On the other hand, such interference may be sustainable in the proper exercise of the right and duty of the prison authorities to maintain prison discipline.

Petitioner, though now represented by counsel, was unrepresented at the time of the filing of the petition.

Niceties in pleading are not required in petitions for writs of habeas corpus from federal prisoners. However, this is a civil action in equity, and since petitioner is now represented by counsel the pleading should be required to appropriately allege an interference with a property right, if such exists. The letters referred to do not definitely relate to the protection of property. I do not intimate that any property right which is claimed to be in jeopardy could include the exploitation by petitioner of his life and activities in the manner intimated as being in contemplation.

Also the jurisdiction of this court does not appear. Section 1343, Title 28, under the heading "Civil Rights" grants jurisdiction where there exists a conspiracy to deny civil rights. A conspiracy is not alleged. If a federal question is presented, the jurisdictional amount must be alleged.

The motion to dismiss is granted and petitioner may have 10 days in which to amend.

Dated: December 7, 1948.

DAL M. LEMMON,
United States District Judge.

February 3, 1949.

Dear Mr. Stroud:

That was very kind and thoughtful to mention a typewriter to Mr. Marcus. However, I can't type and have no use for one. Although I have not my own office I am as-

sociated in one where there are five stenographers. But I have no arrangements to use them in a case where I volunter and expect no fee. In the beginning I saw that there were lots of good things to be said in your favor and I had in mind to help more by talking than by any legal efforts which would require a lot of office work.

I have written to Mr. Marcus twice about that inquiry and he just informed me that he has it in mind but wants to know more about it from you. Did not mention it to the attorney but will tell him about it when I see him. Thought it better not to write about it at the present time. I told Mr. Marcus and forget it if I told you that two friends of mine in the retail drug business, said it should be taken up with a manufacturing Drug Co. The attorney has in mind to file a new petition.

Sincerely,

W. FALLON.

LAW OFFICES OF
JACQUES LESLIE
275 South Beverly Drive
Beverly Hills, California

February 25, 1949.

Mr. Robert Stroud,
P. N. B. 594,
Alcatraz, California.

Dear Mr. Stroud:

Your brother Marcus has informed us of your great anxiety in connection with our activities on your behalf.

Rest assured that we have not abandoned your matter, nor have we abandoned you.

We are now preparing a new petition which shall be limited to the effort to obtain for you the use of a library, a laboratory, and such correspondence which may be necessary to enable you to continue your research in ornithology.

I have noticed various articles in newspapers recently wherein your name was mentioned by other ornithologists. Apparently one or more persons who are acquainted with your digest and with your work in general were bemoaning the fact that they were unable to communicate with you for the purpose of facilitating their treatment of sick birds.

As soon as our petition is ready, I shall send it to you so that you may read it carefully, and if you agree with its contents, I will expect you to sign it and return it to me so that we may file it. Of course, I shall come to San Francisco again to present the argument in connection with that petition.

In the meantime, if there is any further information or ideas which you might care to furnish to me, I shall, of course, be most pleased to hear from you.

Trusting that I may hear from you shortly, I am,

Very truly yours,

/s/ JACQUES LESLIE.

cc: L. G. Marcus.

LAW OFFICES OF
JACQUES LESLIE
275 South Beverly Drive
Beverly Hills, California

July 5, 1949.

Robert Stroud,
P. M. B. 594,
Alcatraz, California.

Dear Mr. Stroud:

Enclosed is a first draft of a Petition for an Injunction to be presented to the United States District Court on your behalf.

Would you be kind enough to read this, make any notes or comments in connection therewith that may occur to you, and let me hear from you.

As soon as I receive your comments, I shall put this Petition in final form and have it filed.

In all probability I shall make an effort to use Mr. William Fallon as associate counsel in San Francisco, as he was of inestimable assistance in connection with the previous petition.

Yours very truly,

/s/ JACQUES LESLIE.

Encl.
cc:
G. L. Marcus
Wm. Fallon.

NATHAN COHN
Attorney at Law
Sixth Floor
105 Montgomery Street
San Francisco, California

March 2, 1951.

Mr. Robert Stroud,
No. 594,
Alcatraz, California.

Dear Mr. Stroud:

This morning I argued your case before the United States Court of Appeals for the Ninth Circuit.

I presented the argument as you wished and in the manner which you requested.

Judge Denman was not sitting today, but I wish to assure you that the Justices who were present gave your petition and my oral argument their interest and attention.

Among the main points raised by the Justices were the following:

First: The Justices raised the point that as you were not asking for unrestricted communication privileges, but merely asking for the enjoinment of any unreasonable interference with your communications, that the Court would be put in the position of the prison board in deciding whether any interference was unreasonable, should some interference arise. Of course, as you know, decisions which are not final or which would not finally decide the question are usually not rendered by the Courts.

In a case such as this, the Courts could hold that any interference by the Warden would again raise the question as to whether or not the interference was reasonable, and that further litigation would again be necessary upon every decision of the Warden.

Secondly: Even though a prisoner in Alcatraz may have a property right, does the property right hold, or is it allowed when it may endanger the prison system. By this, it is not meant that the property right must cause the prison system trouble, but if every prisoner was allowed unrestricted correspondence outside of the prison, someone might probably work out a code and endanger the entire system.

Thirdly: Does a prisoner, as a part of his property right, have the right to correspond using defamatory and antagonistic criticism? Unfortunately, the two letters that you introduced as exhibits, one to Mr. Marcus and one to Mr. Leslie, were both antagonistic and in some instances defamatory. This was even stated by yourself at the end of your memo to Mr. Marcus.

Fourthly: Is there a property right in merely corresponding with your business agent and your attorney? According to the petition and the transcript of the record, there is no book yet in evidence which the Warden has denied you the privilege of publishing. I believe that your petition would have carried much more weight had there been a manuscript and upon your attempting to send it to Mr. Marcus and the Warden refused to allow you to do so. This, of course, should have been stated in your original transcript or original petition and would have been actually an infringement on present property.

You ask me whether or not I am interested in cases of this type. I, like any other attorneys, am interested in cases which have merit, and for which I may receive a fee. Of course, like any other attorney, I do not wish to take any cases instigated merely to inconvenience, harass or embarrass the prison officials or the Government officials. If any prisoner is the victim of any injury, I feel it my duty and obligation to assist them if I can.

I would be happy to hear from anyone who has a legitimate complaint for which there is a legal remedy.

As soon as I hear anything regarding the decision, I will advise you.

Kindest personal regards.

Very truly yours,

/s/ NATHAN COHN.

cc: L. G. Marcus.

CERTIFICATION

This is to certify that I have inspected the document in the possession of Robert Stroud, copies of which are contained in this Appendix, B. C. D., and E and which consist of the following items:

B. Official Copy of Memorandum Opinion of Judge Louis E. Goodman, in case No. 23817.

Correction of Judge Goodman's Opinion;

C. Order of Judge Dal Lemmon (in case No. 28295-H:

D. Letter from Attorney William Fallon of the date of February 3, 1949;

Letter from Attorney Jacques Leslie of the date of February 25, 1949;

Letter from Attorney Jacques Leslie of the date of July 5, 1949;

E. Letter from Attorney Jacques Leslie of the date of July 5, 1949;

Letter from Attorney Jacques Leslie of the date of July 5, 1949;

and I find that the copies of those documents contained in this appendix are true and faithful reproductions of the originals, and in certification of this fact I hereto set my hand and seal.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths:

NOVA F. STUCKER,
Act. Associate Warden,
U. S. Penitentiary, Alcatraz, Calif.

Records at U. S. Penitentiary, Alcatraz, California, Indicate that Robert Stroud is a citizen of the United States.

Date: July 19, 1951.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 213

ROBERT STROUD, PETITIONER

v.

E. B. SWOPE, WARDEN, UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Appeals (R. 56–60) are reported at 187 F. 2d 850.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1951 (R. 60). On May 28 and June 18 the time for filing a petition for a writ of certiorari was extended by orders of the Chief Justice to June 30 and July 30, 1951, respectively (R. 61–62). The petition for a writ of certiorari was filed on July 30, 1951. The juris-

diction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a federal District Court should enjoin, as unconstitutional, enforcement by the warden of a federal prison of a disciplinary prison order forbidding inmates to transact business by correspondence.

STATUTES INVOLVED

18 U. S. C. 4042 (Supp. IV, 1946 ed.) provides:

> The Bureau of Prisons, under the direction of the Attorney General, shall—
>
> (1) have charge of the management and regulation of all Federal penal and correctional institutions;
>
> (2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;
>
> (3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.
>
> This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

1979 R. S. (8 U. S. C. (1946 ed.) 43) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the

> United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1980 R. S. (8 U. S. C. (1946 ed.) 47) provides in pertinent part:

> * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT

Petitioner, a United States citizen serving a life sentence in Alcatraz Penitentiary for murder, brought suit in the District Court for the Northern District of California against respondent warden, under what he termed a "petition for an injunction restraining the respondent * * * from unlawful interference with the lawful business interests of the petitioner or of depriving the petitioner of property rights secured to him under

the Constitution and laws of the United States, and other redress"[1] (R. 2–18; Pet. 41).

The allegations of the complaint filed by petitioner in the District Court may be summarized as follows:

An order issued by the federal prison authorities on October 4, 1931, but pre-dated to July 1, 1931, forbade inmates of Federal prisons to transact any kind of business by correspondence.[2] Respondent and other officials of the Bureau of Prisons were engaged in a conspiracy to deprive petitioner of his lawful property rights without

[1] A prior petition for a writ of habeas corpus filed by petitioner was denied. See *Stroud* v. *Johnston*, 139 F. 2d 171 (C. A. 9), certiorari denied, 321 U. S. 796.

[2] This order provided: "An inmate may not be permitted to transact business by correspondence, no matter how legitimate it may be. Correspondence with business associates must be limited to social matters only." (Pet. 33; R. 15.) It was promulgated pursuant to the Act of May 14, 1930, c. 274, §§ 2, 3, 46 Stat. 325, which is presently embraced in very similar terms in 18 U. S. C. 4042 (p. 2, *supra*).

Paragraph 2 of Section b at pages 2 and 3 of Manual Bulletin No. 96, dated February 23, 1944, issued by the Director of the Bureau of Prisons, reads in pertinent part: "* * * *Correspondence with business associates, of course, must be limited to social matters. An inmate cannot be permitted to direct his business, no matter how legitimate it may be, while he is in prison.* But this does not go to the point of prohibiting correspondence necessary to enable the inmate to protect and husband the property and funds that were legitimately his at the time he entered the institution. Thus a prisoner could correspond about refinancing a mortgage on his home or sign insurance papers, but he could not operate a mortgage or insurance business while in the institution." (R. 58; emphasis added.)

due process of law by enforcing this unconstitutional order against him (R. 3–4, 15–16). Petitioner was the author of two books on birds, "Diseases of Canaries" and "Stroud's Digest on the Diseases of Birds," and was also interested in the production of a motion picture to be based upon his life story (R. 4, 6, 7–8, 9–10). The arrangements as to sale of the rights to the books, negotiations for the motion picture contract, and other business matters of petitioner were being handled by his brother, who went under the name of L. G. Marcus, as his business agent (R. 7–8, 10–11).

In a letter dated January 14, 1950 (petitioner's Ex. A, R. 29–34) from petitioner to one Leslie, the lawyer for the motion picture producer interested in petitioner's life story, he criticized Leslie for the past handling of his legal affairs, stated the terms upon which he would sign a new picture contract, and appended to the letter an outline (R. 34–48) of an analytical history of the federal prison system which he proposed to write in a new book on this subject. Petitioner was permitted by the prison authorities to mail the letter, but not the outline, to Leslie, and he was not allowed to mail copies of the letter and outline to Marcus. (R. 8–9.)

Subsequent to interviews on February 8 and 10, 1950, with Marcus on various subjects of petitioner's private business, petitioner wrote a memorandum (Pet. Ex. B, R. 22–29), giving instruc-

tions as to the sale of some of his books, the formation of an educational and research institution to be known as Stroud's Laboratory, Incorporated, and the conveyance of certain real property to the corporation by his friend, a Mrs. Foote. On February 14, 1950, the prison authorities returned this memorandum to petitioner. (R. 10–12.)

Petitioner alleged that the refusal by respondent to permit the mailing of the matters outlined above, in compliance with the order forbidding inmates to conduct business by correspondence, deprived him of his property rights without due process of law (R. 9, 12). He prayed for a temporary and permanent injunction against the enforcement of the order proscribing business correspondence as being unconstitutional, and asked for damages in such amount as the court might find that he had been injured (R. 17).

The District Court ruled as follows (R. 48):

> The petition for injunction is denied. Treating the petition as one for the writ of habeas corpus, it is denied and the proceeding is dismissed.

On appeal, the Court of Appeals denied petitioner's application for a writ of habeas corpus ordering that he be produced to argue his appeal,[3] and affirmed the judgment of the District Court (R. 49, 55, 60).

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[3] Petitioner's appeal was argued by court-appointed counsel (Pet. 38; R. 55).

ARGUMENT

Petitioner's basic contention is that the order forbidding prison inmates to transact business by correspondence (p. 4, *supra*) is unconstitutional as depriving him of his property without due process of law, and is therefore subject to judicial review. Asserting that his property rights in his literary publications and other business interests are protected under 1979 and 1980 R. S. (8 U. S. C. (1946 ed.) 43 and 47) (pp. 2–3, *supra*), he claims that the warden should be enjoined from enforcing the order, and that damages suffered by him as a result of the alleged conspiracy against him should be assessed in his favor. (Pet. 17, 27, 33, 35.) Petitioner's position is untenable.[4]

Petitioner, while an inmate of a Federal prison, has no right to carry on unlimited correspondence with the outside world regarding his business ventures.[5] Such a prerogative is conferred neither

[4] Petitioner's complaint is denominated a "petition for an injunction," etc. (R. 2), but since it is not clear as to just what petitioner is seeking, the district judge acted properly in treating it as a petition for habeas corpus (R. 48, 57). Cf. *Secchi* v. *U. S. Bureau of Immigration*, 58 F. Supp. 569 (M. D. Pa.). And since the petition showed upon its face that there was no cause for granting the writ, there was no occasion for the district judge to order the production of the prisoner (See Pet. 36–38) before dismissing the petition. Cf. *Johnson* v. *Eisentrager*, 339 U. S. 763, 768; *Walker* v. *Johnston*, 312 U. S. 275, 284.

[5] Petitioner does not limit his claim to only "reasonable correspondence," as his counsel did in arguing his appeal (R. 57).

by the Constitution nor by statute. As this Court noted in *Price* v. *Johnston,* 334 U. S. 266, 285, "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." A privilege of carrying on unlimited business correspondence for all inmates would impose an unduly onerous burden of administrative supervision upon the prison authorities, and increase opportunities for escape. The order banning the transaction of business by correspondence was a reasonable regulation made pursuant to 18 U. S. C. 4042 (p. 2, *supra*) in the exercise of the undoubted authority to superintend the discipline of federal prisoners. The court below was clearly right in holding that "it is not the function of the courts to superintend the treatment and discipline of prisoners in penitentiaries, but only to deliver from imprisonment those who are illegally confined." (R. 59.)*

There is, of course, no question here of the exercise of an absolute power by prison authorities, as

* See *Siegel* v. *Ragen*, 180 F. 2d 785, 788 (C. A. 7), certiorari denied, 339 U. S. 990; *Taylor* v. *United States*, 179 F. 2d 640, 643 (C. A. 9); *Powell* v. *Hunter*, 172 F. 2d 330, 331 (C. A. 10); *Numer* v. *Miller*, 165 F. 2d 986 (C. A. 9); *Shepherd* v. *Hunter*, 163 F. 2d 872, 874 (C. A. 10); *Sanders* v. *Johnston*, 159 F. 2d 74 (C. A. 9); *Snow* v. *Roche*, 143 F. 2d 718, 719 (C. A. 9), certiorari denied, 323 U. S. 788; *Sarshik* v. *Sanford*, 142 F. 2d 676 (C. A. 5); *Platek* v. *Aderhold*, 73 F. 2d 173, 175 (C. A. 5).

contended by petitioner (Pet. 8), to promulgate arbitrary rules under which a "prisoner may be beaten, hung up by the thumbs, starved to death, or deliberately murdered." It is merely a case of the exercise of wise discretion by prison authorities in order to maintain necessary and proper prison discipline. And as the court below said (R. 59):

> Congress has carefully refrained from imposing upon the courts the authority to interfere with matters of prison discipline affecting activities of the character revealed by the record in this case.

Hence, cases such as *Coffin* v. *Reichard,* 143 F. 2d 443, 444–445 (C. A. 6), and *In re Birdsong,* 39 Fed. 599 (S. D. Ga.), involving cruelties to prisoners, upon which petitioner relies (see Pet. 9–10, 18), are inapposite.[7]

---

[7] Petitioner also contends (Pet. 31–32) that a single district judge did not have power to dismiss his petition, but that only a three-judge court could do this under 28 U. S. C. 2282, which provides: "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title." Petitioner's complaint, however, did not seek to enjoin the enforcement of any act of Congress as such. Hence, Section 2282 is plainly not controlling. In any event, the complaint did not state facts entitling petitioner to the relief prayed.

CONCLUSION

The judgment below is correct and no conflict of decisions is presented. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
JAMES M. MCINERNEY,
Assistant Attorney General.
ROBERT S. ERDAHL,
ROBERT G. MAYSACK,
Attorneys.

SEPTEMBER 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1951